performance. *Edgerton* v. *Peckham*, 11 Paige (N. Y.) 352. It has even been held that the vendor cannot rescind a contract for delinquency in the payment of an installment where it was agreed after the original contract was made that upon the vendee's failure to pay promptly, all prior payments should be forfeited. *De Camp* v. *Feay*, 5 Serg. & R. (Pa.) 323, 9 Am. Dec. 372. It is doubtful whether these last two decisions are sound. The more reasonable rule of the United States Supreme Court is that in such cases of late payments by the vendee, specific performance will be given only if his failure to pay promptly was excusable, as where the vendor's conduct encouraged the purchaser to defer payment and the latter, with but little delay, tendered payment in lawful money. *Cheney* v. *Libby*, 134 U. S. 68. On principle and by the weight of authority, the better rule is that announced in the instant case, viz., that wherever the parties to a contract to convey land have deliberately stipulated that time shall be of the essence (or used words to that effect), a court of equity will so construe the contract and leave the vendee without a remedy if he does not comply in time. *Waterman* v. *Banks*, 144 U. S. 394; *Garretson* v. *Vanloon*, 3 G. Greene (Iowa) 128, 54 Am. Dec. 492; *Wilcoxson* v. *Stitt*, 65 Cal. 596, 4 Pac. 629, 52 Am. Rep. 310.

TELEGRAPHS AND TELEPHONES—INJURY BY FAILURE TO FURNISH TELEPHONE SERVICE ACTIONABLE.—Plaintiff, who was a regular subscriber of defendant company, discovered that two of his horses had been accidentally poisoned, and sought to reach a veterinary over defendant's telephone line. Plaintiff lived ten miles from the nearest town, and the horses were so sick that he could not leave them, and although he advised the operator of the urgency of his call, and tried repeatedly, it was twelve hours before he could obtain medical aid, and the horses died. It was shown that one of the veterinarians was in his office for four hours during the time plaintiff was calling, and would have answered the call at once if he had received it. Plaintiff brought an action for the loss of the horses, alleging that in all reasonable probability the horses could have been saved with prompt medical attention. The defendant demurred generally. *Held*, averment is not so uncertain and conjectural as to be demurrable, but the question is one of fact for the jury. *Peterson* v. *Monroe Independent Telephone Co.* (Neb.), 182 N. W. 1017.

Telegraph and telephone companies are not held to the strict liability of common carriers, and are consequently not insurers of the safety of transmission of messages. *Primrose* v. *Western Union Tel. Co.*, 154 U. S. 1. But they are liable for such damages and only such as naturally and proximately result from their negligent performance of their duty as to the transmission and delivery of messages. *Western Union Tel. Co.* v. *Schriver*, 141 Fed. 538, 4 L. R. A. (N. S.) 678; *Hall* v. *Western Union Tel. Co.*, 59 Fla. 275, 51 So. 819, 27 L. R. A. (N. S.) 639. It is very often on account of the failure to show that the loss or damage is the natural and proximate result of the telegraph or telephone company's negligence that the courts refuse to hold the

company liable. Thus, where by reason of the delay of a telephone company in calling a veterinary surgeon to its station, as it undertook to do, he lost several hours in reaching a horse he was called to attend, and the animal died in the meantime, damages for the loss of the horse could not be recovered, as the negligence of the company was too remote. *Central Union Tel. Co.* v. *Swoveland*, 14 Ind. App. 341, 42 N. E. 1035. It has been held in a suit by a husband for damages on account of the death of his wife, which he alleged was due to the negligence of the telephone company in failing to connect him with a physician promptly, that the defendant was not liable unless it could be shown that in all human probability the death would not have resulted had it not been for the defendant's neglect. *Glawson* v. *Southern Bell Telephone and Telegraph Co.*, 9 Ga. App. 450, 71 S. E. 747. It has also been held that a delay of five hours in the delivery of a telegram, when the telegraph company knows that the message is being sent for a veterinary for a very sick horse, and it is shown that had the veterinary reached the horse five hours earlier, it would probably have been saved, is sufficient to sustain a finding that the delay in the delivery of the message was the proximate cause of the death of the horse. *Hendershot* v. *Western Union Tel. Co.*, 106 Iowa 529, 76 N. W. 828, 68 Am. St. Rep. 313. In an acton against a telegraph company for failure to deliver a message to a physician requesting medical attention, it is for the jury to determine whether the patient's condition was aggravated by the delay in securing medical attention, and whether the result would have been different had the message been delivered. *Brown* v. *Western Union Tel. Co.*, 6 Utah 219, 21 Pac. 988. It would seem, therefore, that the correct doctrine as to whether the damage or loss sustained by the plaintiff is the result of the negligent delay of the company, is a question of fact for the jury to determine. For a full discussion of the question at issue here, see 1 VA. LAW REV. 337.